

**§ 171.8**

**40 CFR Ch. I (7-1-06 Edition)**

(2) A provision for issuance by the State of appropriate credentials or documents verifying certification of applicators.

(3) If appropriate, a description of any existing State licensing, certification or authorization programs for private applicators or for one or more categories of commercial applicators may be included. If these programs are determined by EPA to meet standards of competency prescribed by §§171.1 through 171.6, States may certify applicators so licensed, certified or authorized without any additional demonstration of competency provided:

(i) The commercial applicators who were licensed, certified, or authorized have demonstrated their competency based on written examinations and, as appropriate, performance testing, conforming to the standards set forth in §171.4, and

(ii) The private applicators who were licensed, certified, or authorized have demonstrated their competency by written or oral testing procedures or other acceptable equivalent system, conforming to the standards set forth in §171.5.

(4) A statement that the State accepts Federal employees qualified under the Government Agency Plan (GAP) as fully meeting the requirements for certification by that State; or a description of any additional requirements these employees must meet to apply restricted use pesticides in that State. Any such additional requirements shall be consistent with and shall not exceed standards established for other comparable applicators in that State.

(i) Until such time as the GAP has been fully developed and approved by EPA, this statement (§171.7(e)(4)) is not required. However, within 60 days after final approval of the GAP, the State should forward such a statement for inclusion in its State plan.

(5) A description of any cooperative agreements a State has made with any Indian Governing Body to certify or assist in the certification of applicators not subject to State jurisdiction. (§171.10).

(6) A description of any arrangements that a State has made or plans to make relating to reciprocity with other

States or jurisdictions for the acceptance of certified applicators from those States or jurisdictions. However, those arrangements should meet these conditions:

(i) The State according reciprocity should provide for issuance of an appropriate document verifying certification based upon the certifying document issued by the other States or jurisdictions.

(ii) The State according reciprocity should have enforcement procedures that cover out-of-State applicators determined to be competent and certified within the State or jurisdiction.

(iii) The detailed State or jurisdiction standards of competency, for each category identified in the reciprocity arrangement should be sufficiently comparable to justify waiving an additional determination of competency by the State granting reciprocity.

(f) In responding to the preceding requirements, a State may describe in its State plan other regulatory activities implemented under State laws or regulations which will contribute to the desired control of the use of restricted use pesticides by certified applicators. Such other regulatory activities, if described, will be considered by the Administrator in evaluating whether or not a State's certified applicator program satisfies the requirements of §171.7 (a) through (e).

[40 FR 11702, Mar. 12, 1975]

**§ 171.8 Maintenance of State plans.**

(a) Any State certification program approved under §171.7 shall be maintained in accordance with the State plan approved under that section. Accordingly, the State plan should include:

(1) Provisions to assure that certified applicators comply with standards for the use of restricted use pesticides and carry out their responsibility to provide adequate supervision of noncertified applicators.

(2) Provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.

(b) An approved State plan and the certification program carried out under

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such plan may not be substantially modified without the prior approval of the Administrator. A proposed change may be submitted for approval at any time but all applicable requirements prescribed by these Regulations must be satisfied for the modification to be eligible for approval by the Administrator.

(c) Whenever the Administrator determines that a State is not administering the certification program in accordance with the State plan approved under §171.7, he shall so notify the State and provide for a hearing at the request of the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of the plan.

[40 FR 11704, Mar. 12, 1975]

### § 171.9 Submission and approval of Government Agency Plan.

This section is included to provide for certain Federal employees including those whose duties may require them to use or supervise the use of restricted use pesticides in a number of States.

(a) Sections 171.1 through 171.8 will, with the necessary changes, apply to the Government Agency Plan (GAP) for determining and attesting to the competency of Federal employees to use or supervise the use of restricted use pesticides.

(b) Federal employees qualified under the GAP shall:

(1) Be prepared to present the Federal form issued to them attesting to their competency to appropriate State officials.

(2) Fulfill any additional requirements States may have enumerated in their State plans as provided for under §171.7(e)(4).

(c) The employing Federal agency shall ensure that certified employees using or supervising the use of restricted use pesticides within a Federal facility are subject to the same or equivalent provisions prescribed under §171.7(b)(1)(iii) (A)-(E).

[40 FR 11704, Mar. 12, 1975]

### § 171.10 Certification of applicators on Indian Reservations.

This section applies to applicators on Indian Reservations.

(a) On Indian Reservations<sup>1</sup> not subject to State jurisdiction the appropriate Indian Governing Body<sup>2</sup> may choose to utilize the State certification program, with the concurrence of the State, or develop its own plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) If the Indian Governing Body decides to utilize the State certification program, it should enter into a cooperative agreement with the State. This agreement should include matters concerning funding and proper authority for enforcement purposes. Such agreement and any amendments thereto shall be incorporated in the State plan, and forwarded to the Administrator for approval or disapproval.

(2) If the Indian Governing Body decides to develop its own certification plan, it shall be based on either Federal standards (§§171.1 through 171.8) or State standards for certification which have been accepted by EPA. Such a plan shall be submitted through the United States Department of the Interior to the EPA Administrator for approval.

(b) On Indian Reservations where the State has assumed jurisdiction under other Federal laws, anyone using or supervising the use of restricted use pesticides shall be certified under the appropriate State certification plan.

(c) Non-Indians applying restricted use pesticides on Indian Reservations not subject to State jurisdiction shall be certified either under a State certification plan accepted by the Indian Governing Body or under the Indian Reservation certification plan.

<sup>1</sup>The term *Indian Reservation* means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

<sup>2</sup>The term *Indian Governing Body* means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.